

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JORDAN TUCKER,
Plaintiff,

v.

ARMANDO DE LA CRUZ,
Defendant.

Case No. 1:24-cv-01566-KES-EPG (PC)

ORDER DECLINING TO ADOPT FINDINGS
AND RECOMMENDATIONS AND
GRANTING PLAINTIFF'S APPLICATION
TO PROCEED IN FORMA PAUPERIS

(Docs. 2, 8)

Plaintiff is proceeding pro se in this action filed pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on December 20, 2024, together with his motion to proceed in forma pauperis (IFP). Docs. 1, 2. A certified copy of plaintiff's prison trust fund account statement was filed on December 20, 2024. Doc. 6. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On January 15, 2025, the assigned magistrate judge issued findings and recommendations recommending that plaintiff's motion to proceed in forma pauperis be denied and that plaintiff be directed to pay the \$405.00 filing fee for this action. Doc. 8. The magistrate judge found that plaintiff was able to afford the costs of this action because plaintiff received multiple deposits in September of 2024 totaling \$3,901.62; plaintiff then made several large purchases that lowered his available balance at the time he signed his IFP application (which was dated November 20,

1 2024) to \$1,078.60; and by the time this action was docketed, the amount had been lowered to
2 \$358.25. *Id.* at 2.

3 The findings and recommendations were served on plaintiff and contained notice that any
4 objections were to be filed within thirty days. *Id.* at 3. On February 18, 2025, plaintiff filed
5 objections to the findings and recommendations. Doc. 9. In his objections, plaintiff states he is
6 indigent, that he is paying child support, that the funds he had are no longer available, and that he
7 does not have the means to pay the filing fee. *Id.* Plaintiff also alleges that the law library clerk
8 incompletely e-filed this action, which delayed the filing of this action until the funds were no
9 longer available. *Id.* at 1.

10 In accordance with 28 U.S.C. § 636 (b)(1), this Court has conducted a de novo review of
11 this case. In reviewing an IFP application, a court is “entitled to consider [a plaintiff’s] own
12 economic choices about how to spend his money.” *Olivares v. Marshall*, 59 F.3d 109, 112 (9th
13 Cir. 1995). The magistrate judge considered plaintiff’s decision to spend money on commissary
14 items rather than to pay the filing fee for his civil rights suit and recommended that the IFP
15 application be denied. Doc. 8 at 2.

16 While the Court may consider plaintiff’s spending, the filing fee “should not take the
17 prisoner’s last dollar.” *Olivares*, 59 F.3d at 112. The Court notes that \$2,700.00 of the
18 withdrawals appear to be for child support. Doc. 6. Further, by the time this action was docketed
19 on December 20, 2024, plaintiff had only \$358.25 in available funds, which was insufficient to
20 pay the \$405 filing fee. Doc. 6 at 2.

21 Plaintiff has made the showing required by § 1915(a) and accordingly, the request to
22 proceed in forma pauperis will be granted. Plaintiff is obligated to pay the statutory filing fee of
23 \$350.00 for this action. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments
24 in the amount of twenty percent (20%) of the preceding month’s income credited to plaintiff’s
25 trust account. The California Department of Corrections is required to send to the Clerk of the
26 Court payments from plaintiff’s trust account each time the amount in the account exceeds
27 \$10.00, until the statutory filing fee is paid in full. 28 U.S.C. § 1915(b)(2).
28

Accordingly:

1. The Court declines to adopt the findings and recommendations issued on January 15, 2025 (Doc. 8).
2. Plaintiff's [2] application to proceed in forma pauperis is GRANTED.
3. **The Director of the California Department of Corrections or his designee shall collect payments from plaintiff's prison trust account in an amount equal to twenty percent (20%) of the preceding month's income credited to the prisoner's trust account and shall forward those payments to the Clerk of the Court each time the amount in the account exceeds \$10.00, in accordance with 28 U.S.C. § 1915(b)(2), until a total of \$350.00 has been collected and forwarded to the Clerk of the Court. The payments shall be clearly identified by the name and case number assigned to this action.**
4. The Clerk of the Court is directed to serve a copy of this order and a copy of plaintiff's in forma pauperis application on the Director of the California Department of Corrections, via the Court's electronic case filing system (CM/ECF).
5. The Clerk of the Court is directed to serve a copy of this order on the Financial Department, U.S. District Court, Eastern District of California.

IT IS SO ORDERED.

Dated: March 25, 2025


UNITED STATES DISTRICT JUDGE